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7 BROOKDALE PROVIDENT MANAGEMENT,  
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8

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 TAMMY MARSHALL

12 Plaintiff,

13 v.

14 BROOKDALE PROVIDENT  
MANAGEMENT, LLC., and DOES 1-25,  
15 inclusive,

16 Defendants.  
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Case No. C 08-02172 CW

**[PROPOSED] ORDER DENYING  
PLAINTIFF'S MOTION TO REMAND**

**[PROPOSED] ORDER DENYING PLTF'S MTN  
TO REMAND TO SAN MATEO COUNTY  
SUPERIOR COURT**

**CASE NO. C 08-02172 CW**

1 On July 10, 2008, a hearing was held regarding Plaintiff Tammy Marshall's  
2 ("Plaintiff") Motion to Remand this matter to the Superior Court of the State of California for the  
3 County of San Mateo. Both Plaintiff and Defendant, Brookdale Provident Management, LLC  
4 ("Defendant"), were represented by counsel.

5 The Court, having considered the moving papers and having heard oral argument,  
6 denies the motion to remand to state court:

7 IT IS ORDERED that Plaintiff's motion to remand is denied.

8 IT IS FURTHER ORDERED that Paragraph 15 of Defendant's Notice To Federal  
9 Court Of Removal Of Civil Action From State Court be amended as shown in the attached Exhibit A  
10 and is hereby accepted into the record by this Court without need to file a separate motion for leave  
11 to amend.

12  
13  
14 Dated: \_\_\_\_\_ 2008

\_\_\_\_\_  
JUDGE CLAUDIA WILKEN

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**Exhibit A**  
**To [Proposed] Order**

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Attorneys for Defendants  
BROOKDALE PROVIDENT MANAGEMENT,  
LLC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TAMMY MARSHALL

Plaintiff,

v.

BROOKDALE PROVIDENT  
MANAGEMENT, LLC., and DOES 1-25,  
inclusive,

Defendants.

Case No. C 08-02172 CW

**AMENDED NOTICE TO FEDERAL  
COURT OF REMOVAL OF CIVIL  
ACTION FROM STATE COURT  
(DIVERSITY)**

**28 U.S.C. §§ 1332, 1441, 1446**

San Mateo County Superior Court  
Case No. CIV 471555

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN**  
 2 **DISTRICT OF CALIFORNIA AND TO PLAINTIFF TAMMY MARSHALL AND HER**  
**ATTORNEY OF RECORD:**

3 PLEASE TAKE NOTICE THAT Defendant BROOKDALE PROVIDENT  
 4 MANAGEMENT, LLC ("Brookdale" or "Defendant") hereby removes the above-titled action from  
 5 the Superior Court of the State of California for the County of San Mateo to the United States  
 6 District Court, pursuant to 28 U.S.C. §§ 1441 and 1446.

7 **I. JURISDICTION AND VENUE**

8 1. This action is a civil action over which this Court has original jurisdiction  
 9 based upon the complete diversity of citizenship of the parties pursuant to section 1332(a) and is one  
 10 which may be removed to this Court by Defendant pursuant to 28 U.S.C. § 1441 because it is a civil  
 11 action between citizens of different states and the amount in controversy exceeds \$75,000, exclusive  
 12 of interest and costs, as set forth below.

13 2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(a), 1391, 1441(a)  
 14 and 1446, in that this Court is the court for the district and division embracing the place where the  
 15 action is pending in state court.

16 **II. STATUS OF THE PLEADINGS**

17 3. On March 27, 2008, Plaintiff Tammy Marshall ("Plaintiff") commenced this  
 18 action by filing a Summons, Civil Cover Sheet, Affidavit of Personal Delivery of Deputy Court  
 19 Clerk and a Complaint in the Superior Court of the State of California, County of San Mateo,  
 20 entitled *Tammy Marshall, Plaintiff v. Brookdale Provident Management, LLC, and Does 1 through*  
 21 *25, inclusive, Defendants*, designated Superior Court Case No. CIV471555 ("Complaint"). True and  
 22 correct copies of the Civil Action Sheet, Summons, Affidavit of Personal Delivery of Deputy Court  
 23 Clerk and Complaint are attached hereto as Exhibit A. The Complaint alleged the following causes  
 24 of action: (1) Retaliation – Government Code § 12940; (2) Sexual Harassment – Government Code  
 25 § 12940(j); (3) Failure to Prevent Discrimination and Harassment – Government Code § 12940(k);  
 26 and (4) Tortious Constructive Discharge In Violation Of Public Policy.

27 4. On March 27, 2008, the Court issued a Notice of Case Management  
 28 Conference and Order, a copy of which is attached as Exhibit B.

1           5.       On April 25, 2008, Defendant Brookdale filed an answer to Plaintiff's  
2 Complaint with the Superior Court, a copy of which is attached as Exhibit C.

3           6.       A true and correct copy of the San Mateo Superior Court's Register of  
4 Actions for the case is attached hereto as Exhibit D.

5           7.       Defendant Brookdale is informed and believes that personal service on  
6 Defendant Brookdale was completed on March 31, 2008.

7           8.       Defendant Brookdale is informed and believes, and on that basis asserts, that  
8 as of the date of this Notice of Removal, no other individual or entity has been served with the  
9 Complaint.

10          9.       This Notice to Federal Court of Removal of Civil Action from State Court is  
11 timely filed pursuant to 28 U.S.C. § 1446(b) because Defendant has filed this Notice within 30 days  
12 after Defendant Brookdale was served with the Complaint and within one year after commencement  
13 of this action.

14          10.      Pursuant to 28 U.S.C. § 1446(d), written notice of this Notice of Removal to  
15 Federal Court shall be filed contemporaneously with the Clerk of the Court for the Superior Court of  
16 the County of San Mateo California and a copy shall be served on Plaintiff's counsel of record. A  
17 copy of said Notice and Proof of Service is attached hereto as Exhibit E.

18          11.      No further proceedings have been conducted in this case in the Superior Court  
19 of San Mateo.

### 20 **III. DEFENDANTS**

21          12.      The only named defendant to this action is Brookdale.

### 22 **IV. DOE DEFENDANTS**

23          13.      Defendant is informed and believes that none of the Doe Defendants in this  
24 case have been identified or served. Doe Defendants designated 1 to 25 are fictitious, are not parties  
25 to this action, have not been served, and are to be disregarded for the purpose of this removal.  
26 28 U.S.C. § 1441(a). For this reason, the Doe Defendants need not be joined in this removal.  
27 *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193, n. 1 (9th Cir. 1988) (general rule that all  
28 defendants in a state action must join in removal applies only to defendants served in the action);

1 *Republic Western Ins. v. International Ins.*, 765 F. Supp. 628, 629 (N.D. Cal. 1991) (“The law of this  
2 circuit [] is that defendants upon whom service has not been effected at the time the notice is filed,  
3 need not join in the notice of removal”).

#### 4 **V. DIVERSITY OF CITIZENSHIP**

5 14. This action is a civil action over which this Court has original jurisdiction  
6 under 28 U.S.C. § 1332 and which may be removed to this Court by Defendant pursuant to  
7 28 U.S.C. § 1441(a) based on the existence of diversity of citizenship between the real parties to this  
8 action and on the fact that the amount in controversy exceeds \$75,000.

9 15. The parties to this action have complete diversity of citizenship in that  
10 Defendant was at the time the action was filed and was at the time of this removal a citizen of  
11 Delaware and Illinois, in that its sole member, Brookdale Living Communities Inc. is a corporation  
12 formed under the laws of Delaware and had its principal place of business in Illinois.<sup>1</sup> 28 U.S.C.  
13 § 1332(c)(1). Defendant is informed and believes and on that basis alleges that Plaintiff was at the  
14 time of filing this action, and is now at the time of this removal, a citizen of California.<sup>2</sup>

15 16. Diversity of citizenship exists so long as no plaintiff is a citizen of the same  
16 state as any defendant at the time the action was filed and at the time of removal. *See Strawbridge v.*  
17 *Curtiss*, 7 U.S. (3 Branch) 267 (1806); *see also United Food Local 919 v. Centermarie Properties*,  
18 30 F.2d 298, 301 (2nd Cir. 1994). For purposes of removal, the citizenship of Doe Defendants are  
19 disregarded and only named defendants are considered. 28 U.S.C. § 1441(a); *see Newcombe v.*  
20 *Adolf Coors Co.*, 157 F.3d 690 (9th Cir. 1998).

21 17. Complete diversity of citizenship exists by and between the parties because  
22 Plaintiff and Defendant, are citizens of different states. Complete diversity between Plaintiff and  
23 Defendant existed both at the time the action was filed and exists now at the time of this removal.  
24 Consequently, this matter may properly be removed to this Court.

25  
26 <sup>1</sup> Brookdale Living Communities Inc. had its corporate headquarters in Chicago, Illinois and that is where its corporate  
officers were located. Note that, post-removal, the principal place of business has changed to 111 Westwood Place,  
Suite 200, Brentwood, Tennessee 37027.

27 <sup>2</sup> Plaintiff has pleaded that she resides in the County of San Mateo, California (Complaint ¶1). However, Defendant has  
28 received information to suggest that Plaintiff is actually a citizen of New York and was at the time this action was  
commenced. Regardless, diversity between the parties exists.

1 **VI. AMOUNT IN CONTROVERSY**

2 18. It is clear on the face of the Complaint that the amount in controversy exceeds  
3 this Court's jurisdictional minimum of \$75,000.<sup>3</sup> To establish this, Defendant need only show by a  
4 preponderance of the evidence (that it is more probable than not) that Plaintiff's claimed damages  
5 exceed the jurisdictional minimum. *See Sanchez v. Monumental Life Ins. Co.*, 95 F.3d 856, 862  
6 (9th Cir. 1996) (amended 102 F.3d 398, 404).

7 19. Plaintiff has pleaded four separate causes of action and has alleged damages  
8 including: "loss of salary, benefits, and additional amounts of money" (Complaint ¶ 27, p. 9:19-20;  
9 ¶ 34, p. 11:2-3; ¶ 40, p. 12:5-6; and ¶ 47, p. 13:8-9). Plaintiff's last salary was approximately  
10 \$102,000 per annum and it is now eight months since her employment ended. It will undoubtedly be  
11 over one year from when Plaintiff's employment ended until the trial in this matter. Therefore,  
12 based on past loss of earnings alone the amount in controversy exceeds \$75,000. In addition,  
13 Plaintiff claims lost past and future benefits, future loss of wages. These alleged damages easily  
14 meet the jurisdictional minimum.

15 20. Plaintiff has also alleged that she has suffered "humiliation, anguish, and  
16 emotional and physical distress," (*See* Complaint ¶ 28, p. 9:24-25; ¶ 35, p. 11:8-9; ¶ 41, p. 12:10-11;  
17 and ¶ 48, p. 13:13-14). In addition, Plaintiff asserted that she "developed extreme anxiety"  
18 (Complaint ¶ 13, p. 5:26), was "hospitalized" (Complaint ¶ 21, p. 8:8) and "placed on  
19 antidepressants" (Complaint ¶ 21, p. 8:9). Awards for emotional distress, particularly where the  
20 symptoms are alleged to be "extreme", medication was prescribed and that hospitalization resulted,  
21 may well exceed \$75,000. Therefore, again, on this basis alone, the amount of damages claimed by  
22 Plaintiff is more probable than not to exceed the jurisdictional minimum.

23 21. Further, Plaintiff has asserted claims to punitive damages with respect to all of  
24 her claims for damages (Complaint ¶¶ 29, 36, 42 and 49). Although Defendant denies that it could  
25 or should be liable for punitive damages, for purposes of assessing whether the amount in  
26

27 <sup>3</sup> See *White v. FCI USA, Inc.*, 319 F.3d 672 at 675 (2003)—lengthy list of compensatory and punitive damages including  
28 loss of pay, fringe benefits, impaired earning capacity, harm to credit, emotional distress, combined with a claim for attorney fees sufficient to meet burden that it was more likely than not that amount in controversy would exceed jurisdictional minimum.



1 controversy element has been satisfied in order to invoke diversity jurisdiction, the Ninth Circuit  
 2 Court of Appeals has specifically held that such damages claimed by Plaintiff are properly included  
 3 in computing the jurisdictional amount. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir.  
 4 2001). Punitive damages on any one of Plaintiff's claims could meet the jurisdictional requirement.  
 5 See *White v. FCI USA, Inc.*, 319 F.3d 672 at 675 (punitive damages alone was more likely than not  
 6 to exceed the jurisdictional amount).

7 22. Further, Plaintiff also seeks an award of her attorney's fees with respect to her  
 8 claims, which should also be considered when calculating the amount in controversy. *Goldberg v.*  
 9 *C.P.C. Int'l, Inc.*, 678 F. 2d 1365, 1367 (9th Cir. 1982) (attorneys' fees included in considering  
 10 jurisdictional amount). Representation of Plaintiff through trial would almost certainly exceed the  
 11 \$75,000 threshold.

12 23. Thus, the preponderance of the evidence demonstrates an amount in  
 13 controversy clearly in excess of \$75,000.

#### 14 VII. CONCLUSION

15 24. Defendant, having shown that diversity exists and that the amount in  
 16 controversy exceeds the jurisdiction minimal, is entitled to remove this matter to this Court.

17 25. Pursuant to 28 U.S.C. § 1441(a), Defendant removes this case from the  
 18 Superior Court of the State of California in and for the County of San Mateo to this Court.

19 Dated: June 13, 2008



20  
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 LITTLER MENDELSON  
 A Professional Corporation  
 Attorneys for Defendants  
 22 BROOKDALE PROVIDENT  
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